

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IRMA RAMIREZ, an individual; and DISABILITY
RIGHTS, ENFORCEMENT, EDUCATION,
SERVICES:HELPING YOU HELP OTHERS, a California
public benefit corporation,

SUMMONS IN A CIVIL CASE

BZ

v.

CASE NUMBER:

CV 08 1189

FOODMAXX 468; EXPRESSWAY PARTNERS, LLC, a
limited liability company and SAVE MART
SUPERMARKETS,

TO:

See service list attached

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

Thomas E. Frankovich
THOMAS E. FRANKOVICH, APLC
2806 Van Ness Avenue
San Francisco, CA 94109
Telephone: 415/674-8600

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

RICHARD W. WIEKING

FEB 28 2008

CLERK

DATE

Helen L. Almacen

(BY) DEPUTY CLERK

BZ

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

IRMA RAMIREZ, an individual; and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

Sonoma County

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas E. Frankovich, APLC
2806 Van Ness Ave., S.F., CA 94109 (415) 674-8600

DEFENDANTS

FOODMAXX 468; EXPRESSWAY PARTNERS, LLC, a limited liability company and SAVE MART SUPERMARKETS

ADR

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Sonoma County

ORIGINAL**II. BASIS OF JURISDICTION** (PLACE AN 'X' IN ONE BOX ONLY)

1 U.S. Government Plaintiff

2 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State

 PTF DEF PTF DEF

Incorporated or Principal Place of Business In This State

Citizen of Another State

 PTF DEF PTF DEF

Incorporated and Principal Place of Business In Another State

Citizen or Subject of a Foreign Country

 PTF DEF PTF DEF

Foreign Nation

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

Original Proceeding

Removed from State Court

Remanded from Appellate Court

Reinstated or Reopened

Transferred from Another district (specify) _____

Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury Med Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERS ONAL PROPERTY		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Orga nizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth In Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Satellite TV
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liabiliy	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus:	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer w/ disab - Emp	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer w/ disab - Other	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 890 Other Statutory Actions
FEDERAL TAX SUITS				
			<input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23

JURY DEMAND YES NO**VIII. RELATED CASE(S)** PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
IF ANY "NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**

(PLACE AND "X" IN ONE BOX ONLY)

 SAN FRANCISCO/OAKLAND SAN JOSE

DATE

2/13/08

SIGNATURE OF ATTORNEY OF RECORD

ORIGINAL

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
 2 THOMAS E. FRANKOVICH,
A Professional Law Corporation
 3 2806 Van Ness Avenue
 4 San Francisco, CA 94109
 Telephone: 415/674-8600
 Facsimile: 415/674-9900

5 Attorneys for Plaintiffs
 6 IRMA RAMIREZ and
 7 DISABILITY RIGHTS
 ENFORCEMENT, EDUCATION,
 SERVICES: HELPING YOU
 HELP OTHERS

8
 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

BZ

11 IRMA RAMIREZ, an individual; and)
 12 DISABILITY RIGHTS, ENFORCEMENT,)
 EDUCATION, SERVICES:HELPING YOU))
 13 HELP OTHERS, a California public benefit)
 corporation,

14 Plaintiffs,

15 v.
 16 FOODMAXX 468; EXPRESSWAY)
 PARTNERS, LLC, a limited liability)
 company and SAVE MART)
 18 SUPERMARKETS,

19 Defendants.

CASE NO.
CIV Righs 08

1189

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of Access
by a Public Accommodation in Violation of the
Americans with Disabilities Act of 1990 (42
U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
and Equal Access in Violation of California
Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
Accessible Sanitary Facilities in Violation of
California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
Access to Full and Equal Accommodations,
Advantages, Facilities, Privileges and/or
Services in Violation of California Civil Code
§51, *et seq.* (The Unruh Civil Rights Act)

25 **DEMAND FOR JURY**

1 Plaintiffs IRMA RAMIREZ, an individual; and DISABILITY RIGHTS, ENFORCEMENT,
 2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
 3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendants
 4 EXPRESSWAY PARTNERS, LLC, a limited liability company and SAVE MART
 5 SUPERMARKETS and allege as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical
 8 disabilities, of which class plaintiff IRMA RAMIREZ and the membership of DREES are
 9 members, for failure to remove architectural barriers structural in nature at defendants'
 10 FOODMAXX #468, a place of public accommodation, thereby discriminatorily denying
 11 plaintiffs and the class of other similarly situated persons with physical disabilities access to, the
 12 full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities,
 13 services, and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to
 14 the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code
 15 §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

16 2. Plaintiff IRMA RAMIREZ is a person with physical disabilities who, on or about
 17 December 22, 2006 June 28, 2007, July 13, 2007 and November 9, 2007, was an invitee, guest,
 18 patron, customer at defendants' FOODMAXX #468, in the City of Rohnert Park, California. At
 19 said time and place, defendants failed to provide proper legal access to the grocery store, which is
 20 a "public accommodation" and/or a "public facility" including, but not limited to *the parking and*
produce bins. The denial of access was in violation of both federal and California legal
 22 requirements, and plaintiff IRMA RAMIREZ suffered violation of her civil rights to full and
 23 equal access, and was embarrassed and humiliated.

24 **JURISDICTION AND VENUE:**

25 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 26 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 27 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 28 nucleus of operative facts and arising out of the same transactions, are also brought under parallel

1 California law, whose goals are closely tied with the ADA, including but not limited to violations
2 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
3 *seq.*, including §19959; Title 24 California Building Standards Code.

4 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1331(b) and is
5 founded on the facts that the real property which is the subject of this action is located at/near
6 605 Rohnert Park Express, in the City of Rohnert Park, County of Sonoma, State of California,
7 and that plaintiffs' causes of action arose in this county.

8 **PARTIES:**

9 5. Plaintiff IRMA RAMIREZ is a "physically handicapped person", a "physically
10 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
11 disabled", "physically handicapped" and "person with physical disabilities" are used
12 interchangeably, as these words have similar or identical common usage and legal meaning, but
13 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
14 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
15 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
16 IRMA RAMIREZ suffers from Post-Polio syndrome. Plaintiff relies on crutches and/or a
17 wheelchair as her ambulence. Plaintiff IRMA RAMIREZ is a "person with physical disabilities",
18 as defined by all applicable California and United States laws. Consequently, plaintiff IRMA
19 RAMIREZ is a member of that portion of the public whose rights are protected by the provisions
20 of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by
21 Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code
22 §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities
23 Act, 42 U.S.C. §12101, *et seq.*

24 6. Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
25 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works
26 with persons with disabilities to empower them to be independent in American society. DREES
27 accomplishes its goals and purposes through education on disability issues, enforcement of the
28 rights of persons with disabilities, and the provision of services to persons with disabilities, the

1 general public, public agencies and the private business sector. DREES brings this action on
2 behalf of its members, many of whom are persons with physical disabilities and whom have
3 standing in their right to bring this action.

4 7. That members of DREES, like plaintiff IRMA RAMIREZ, will or have been
5 guests and invitees at the subject FOODMAXX #468, and that the interests of plaintiff DREES
6 in removing architectural barriers at the subject grocery store advance the purposes of DREES to
7 assure that all public accommodations, including the subject FOODMAXX #468, are accessible
8 to independent use by mobility-impaired persons. The relief sought by plaintiff DREES as
9 alleged herein is purely statutory in nature.

10 8. Defendants EXPRESSWAY PARTNERS, LLC, a limited liability company; and
11 SAVE MART SUPERMARKETS(hereinafter alternatively collectively referred to as
12 "defendants") are the owners and operators, lessors and/or lessees, or agents of the owners,
13 lessors and/or lessees, of the public accommodation known as FOODMAXX #468, located
14 at/near , California, or of the building and/or buildings which constitute said public
15 accommodation.

16 9. At all times relevant to this complaint, defendants EXPRESSWAY PARTNERS,
17 LLC, a limited liability company; and SAVE MART SUPERMARKETS, own and operate in
18 joint venture the subject FOODMAXX #468 as a public accommodation. This business is open
19 to the general public and conducts business therein. The business is a "public accommodation"
20 or "public facility" subject to the requirements of California Civil Code §§51, 51.5 and 54, *et*
21 *seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

22 10. At all times relevant to this complaint, defendants EXPRESSWAY PARTNERS,
23 LLC, a limited liability company; and SAVE MART SUPERMARKETS are jointly and

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1 severally responsible to identify and remove architectural barriers at the subject FOODMAXX
2 #468 pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in
3 pertinent part:

4 **§ 36.201 General**

5 (b) *Landlord and tenant responsibilities.* Both the landlord
6 who owns the building that houses a place of public
7 accommodation and the tenant who owns or operates the place of
8 public accommodation are public accommodations subject to the
9 requirements of this part. As between the parties, allocation of
10 responsibility for complying with the obligations of this part may
11 be determined by lease or other contract.

12 28 CFR §36.201(b)

13 **PRELIMINARY FACTUAL ALLEGATIONS:**

14 11. The FOODMAXX #468, is a grocery store, located at/near 605 Rohnert Park
15 Express, Rohnert Park, California. The FOODMAXX #468, its parking, produce bins and its
16 other facilities are each a “place of public accommodation or facility” subject to the barrier
17 removal requirements of the Americans with Disabilities Act. On information and belief, each
18 such facility has, since July 1, 1970, undergone “alterations, structural repairs and additions”,
19 each of which has subjected the grocery store and each of its facilities, its parking and produce
20 bins to disability access requirements per the Americans with Disabilities Act Accessibility
21 Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

22 12. At all times stated herein, plaintiff IRMA RAMIREZ was a member of DREES.

23 13. At all times referred to herein and continuing to the present time, defendants, and
24 each of them, advertised, publicized and held out the FOODMAXX #468 as being handicapped
25 accessible and handicapped usable.

26 14. On or about December 22, 2006 June 28, 2007, July 13, 2007 and November 9,
27 2007, plaintiff IRMA RAMIREZ was an invitee and guest at the subject FOODMAXX 468, for
28 purposes of food, beverage, produce, sundries and the like.

29 15. On or about December 22, 2006 June 28, 2007, July 13, 2007 and November 9,
30 2007, plaintiff IRMA RAMIREZ had difficulties with the parking for the disabled. The
31 international symbols for parking were obscured, or otherwise faded so as not to be effective and

1 therefore, non complaint. This adversely affected plaintiffs' ability to find parking for the
 2 disabled.

3 16. On or about December 22, 2006 June 28, 2007, July 13, 2007 and November 9,
 4 2007, plaintiff IRMA RAMIREZ shopped at the subject FOODMAXX #468.

5 Plaintiff IRMA RAMIREZ desired to purchase produce (i.e., apples, oranges, egg plants,
 6 zucchini, melons and the like) which are placed in high bins and stacked upon one another,
 7 somewhat like a chopped off pyramid. On each occasion that plaintiff IRMA RAMIREZ would
 8 independently select and pull a piece of produce, others would tumble from the bin.
 9 Furthermore, the existing bin system prevented plaintiff IRMA RAMIREZ from the opportunity
 10 of making the same selections as able bodied persons.

11 17. On or about February 14, 2007, plaintiff IRMA RAMIREZ wrote the landlord and
 12 the manager of FOODMAXX 648 about the parking and bin issues. Plaintiff IRMA RAMIREZ
 13 never received a response.

14 18. Therefore, at said time(s) and place, plaintiff IRMA RAMIREZ, a person with a
 15 disability, encountered the following inaccessible elements of the subject FOODMAXX #468
 16 which constituted architectural barriers and a denial of the proper and legally-required access to a
 17 public accommodation to persons with physical disabilities including, but not limited to:

- 18 a. lack of the requisite type and number of disabled parking stall(s);
 19 b. lack of accessible produce bins;
 20 c. On personal knowledge, information and belief, other public facilities and
 elements too numerous to list were improperly inaccessible for use by
 persons with physical disabilities.

22 19. At all times stated herein, the existence of architectural barriers at defendants'
 23 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
 24 with the Americans with Disabilities Act of 1990 either then, now or in the future.

25 20. On or about February 14, 2007, the landlord and manager of FOODMAXX #648
 26 were sent two (2) letters by or on behalf of plaintiff IRMA RAMIREZ advising of the existence of
 27 architectural barriers, requesting a response within 14 days and requesting remedial measures be
 28 undertaken within 90 days or an explanation of why the time limit set could not be met and/or

1 extenuating circumstances. Said letters are attached hereto collectively as exhibit "A" and
2 incorporated by reference as though fully set forth herein. Defendants' failure to respond
3 evidenced an intent not to seek or engage in an early and reasonable resolution of the matter.

4 21. At all times stated herein, defendants, and each of them, did not act as reasonable
5 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
6 removing architectural barriers that would foreseeably prevent plaintiff IRMA RAMIREZ from
7 receiving the same goods and services as able bodied people and some of which may and did pose
8 a threat of harm and/or personal injury to people with disabilities. Therefore as a legal result of
9 defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff suffered
10 bodily injury.

11 22. As a legal result of defendants EXPRESSWAY PARTNERS, LLC, a limited
12 liability company; and SAVE MART SUPERMARKETS's failure to act as a reasonable and
13 prudent public accommodation in identifying, removing or creating architectural barriers, policies,
14 practices and procedures that denied access to plaintiffs and other persons with disabilities,
15 plaintiffs suffered the damages as alleged herein.

16 23. As a further legal result of the actions and failure to act of defendants, and as a
17 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
18 herein, plaintiffs were denied their civil rights to full and equal access to public facilities. Plaintiff
19 IRMA RAMIREZ suffered a loss of his civil rights and his rights as a person with physical
20 disabilities to full and equal access to public facilities, and further suffered bodily injury on two
21 (2) of the four occasions which took place on or about December 22, 2006 June 28, 2007 , July
22 13, 2007 and November 9, 2007, including, but not limited to, fatigue, stress, strain and pain in
23 wheeling and attempting to and/or transferring up, on, down, to, over, around and through
24 architectural barriers. Specifically, as a legal result of defendants negligence in the design,
25 construction and maintenance of the existing produce bins, plaintiff suffered continuous,
26 repetitive and cumulative trauma to her upper extremities and strain to her abdominal muscles
27 while attempting to remove produce form the bins.

28

1 24. Further, plaintiff IRMA RAMIREZ suffered emotional distress, mental distress,
2 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,
3 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a
4 person with physical disabilities being denied access, all to his damages as prayed hereinafter in
5 an amount within the jurisdiction of this court. No claim is being made for mental and emotional
6 distress over and above that usually associated with the discrimination and physical injuries
7 claimed, and no expert testimony regarding this usual mental and emotional distress will be
8 presented at trial in support of the claim for damages.

9 25. Defendants', and each of their, failure to remove the architectural barriers
10 complained of herein created, at the time of plaintiff IRMA RAMIREZ's first visit to said public
11 accommodation, and continues to create continuous and repeated exposure to substantially the
12 same general harmful conditions which caused plaintiff IRMA RAMIREZ harm as stated herein.

13 26. Plaintiff IRMA RAMIREZ and the membership of DREES were denied their
14 rights to equal access to a public facility by defendants EXPRESSWAY PARTNERS, LLC, a
15 limited liability company and SAVE MART SUPERMARKETS, because defendants
16 EXPRESSWAY PARTNERS, LLC, a limited liability company and SAVE MART
17 SUPERMARKETS maintained a grocery store without access for persons with physical
18 disabilities to its facilities, including but not limited to parking, produce bins and other public
19 areas as stated herein, and continue to the date of filing this complaint to deny equal access to
20 plaintiffs and other persons with physical disabilities in these and other ways.

21 27. On information and belief, construction alterations carried out by defendants have
22 also triggered access requirements under both California law and the Americans with Disabilities
23 Act of 1990.

24 28. Plaintiffs, as described hereinbelow, seek injunctive relief to require the
25 FOODMAXX #468 to be made accessible to meet the requirements of both California law and the
26 Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants
27 operate the grocery store as a public facility.

1 29. Plaintiffs seek damages for violation of their civil rights on December 22, 2006
2 June 28, 2007, July 13, 2007 and November 9, 2007 and they seek statutory damages of not less
3 than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3,
4 for each day after her visit that the trier of fact (court/jury) determines was the date that some or
5 all remedial work should have been completed under the standard that the landlord and tenant had
6 an ongoing duty to identify and remove architectural barriers where it was readily achievable to do
7 so, which deterred plaintiff IRMA RAMIREZ from returning to the subject public
8 accommodation because of her knowledge and/or belief that neither some or all architectural
9 barriers had been removed and that said premises remains inaccessible to persons with disabilities
10 whether a wheelchair user or otherwise.

11 30. On information and belief, defendants have been negligent in their affirmative duty
12 to identify the architectural barriers complained of herein and negligent in the removal of some or
13 all of said barriers.

14 31. Because of defendants' violations, plaintiffs and other persons with physical
15 disabilities are unable to use public facilities such as those owned and operated by defendants on a
16 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
17 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
18 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling
19 defendants to make the subject grocery store accessible to persons with disabilities.

20 32. On information and belief, defendants have intentionally undertaken to modify and
21 alter existing building(s), and have failed to make them comply with accessibility requirements
22 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
23 of them, in failing to provide the required accessible public facilities at
24 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and
25 despicable conduct carried out by defendants, and each of them, with a willful and conscious
26 disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify a
27 trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a more
28 profound example of defendants, and each of them, to other operators of other grocery chains and

1 other public facilities, and to punish defendants and to carry out the purposes of the Civil Code
2 §§ 51, 51.5 and 54.

3 33. Plaintiffs are informed and believe and therefore allege that defendants
4 EXPRESSWAY PARTNERS, LLC, a limited liability company; and
5 SAVE MART SUPERMARKETS, and each of them, caused the subject building(s) which
6 constitute the subject FOODMAXX #468 to be constructed, altered and maintained in such a
7 manner that persons with physical disabilities were denied full and equal access to, within and
8 throughout said building(s) of the grocery store and were denied full and equal use of said public
9 facilities. Furthermore, on information and belief, defendants have continued to maintain and
10 operate said store and/or its building(s) in such conditions up to the present time, despite actual
11 and constructive notice to such defendants that the configuration of said store and/or its
12 building(s) is in violation of the civil rights of persons with physical disabilities, such as plaintiff
13 IRMA RAMIREZ, the membership of plaintiff DREES and the disability community which
14 DREES serves. Such construction, modification, ownership, operation, maintenance and
15 practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and
16 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

17 34. On personal knowledge, information and belief, the basis of defendants' actual and
18 constructive notice that the physical configuration of the facilities including, but not limited to,
19 architectural barriers constituting the FOODMAXX #468 and/or building(s) was in violation of
20 the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is not limited
21 to, communications with invitees and guests, plaintiff IRMA RAMIREZ herself, owners of other
22 businesses, notices they obtained from governmental agencies upon modification, improvement,
23 or substantial repair of the subject premises and other properties owned by these defendants,
24 newspaper articles and trade publications regarding the Americans with Disabilities Act of 1990
25 and other access laws, public service announcements by former U.S. Attorney General Janet Reno
26 between 1993 and 2000, and other similar information. Defendants' failure, under state and
27 federal law, to make the FOODMAXX #468 accessible is further evidence of defendants'
28 conscious disregard for the rights of plaintiff and other similarly situated persons with disabilities.

1 Despite being informed of such effect on plaintiff and other persons with physical disabilities due
2 to the lack of accessible facilities, defendants, and each of them, knowingly and willfully refused
3 to take any steps to rectify the situation and to provide full and equal access for plaintiffs and
4 other persons with physical disabilities to the FOODMAXX #468. Said defendants, and each of
5 them, have continued such practices, in conscious disregard for the rights of plaintiffs and other
6 persons with physical disabilities, up to the date of filing of this complaint, and continuing
7 thereon. Defendants had further actual knowledge of the architectural barriers referred to herein
8 by virtue of the demand letter addressed to the defendants and served concurrently with the
9 summons and complaint. Said conduct, with knowledge of the effect it was and is having on
10 plaintiffs and other persons with physical disabilities, constitutes despicable conduct in conscious
11 disregard of the rights and safety of plaintiffs and of other similarly situated persons, justifying the
12 imposition of treble damages per Civil Code §§52 and 54.3.

13 35. Plaintiff IRMA RAMIREZ and plaintiff DREES, on behalf of its membership and
14 the disability community which it serves, consisting of persons with disabilities, would, could and
15 will return to the subject public accommodation when it is made accessible to persons with
16 disabilities.

17 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC
18 ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
19 DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

20 (On behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS ENFORCEMENT,
21 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit
22 corporation and Against Defendants EXPRESSWAY PARTNERS, LLC, a limited
23 liability company and SAVE MART SUPERMARKETS, inclusive)
(42 U.S.C. §12101, *et seq.*)

24 36. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
25 allegations contained in paragraphs 1 through 35 of this complaint.
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1 37. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 2 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 3 protect:

4 some 43 million Americans with one or more physical or mental
 5 disabilities; [that] historically society has tended to isolate and
 6 segregate individuals with disabilities; [that] such forms of
 7 discrimination against individuals with disabilities continue to be a
 8 serious and pervasive social problem; [that] the nation's proper
 9 goals regarding individuals with disabilities are to assure equality of
 10 opportunity, full participation, independent living and economic
 11 self-sufficiency for such individuals; [and that] the continuing
 12 existence of unfair and unnecessary discrimination and prejudice
 13 denies people with disabilities the opportunity to compete on an
 14 equal basis and to pursue those opportunities for which our free
 15 society is justifiably famous.

16 38. Congress stated as its purpose in passing the Americans with Disabilities Act of
 17 1990 (42 U.S.C. §12102):

18 It is the purpose of this act (1) to provide a clear and comprehensive
 19 national mandate for the elimination of discrimination against
 20 individuals with disabilities; (2) to provide clear, strong, consistent,
 21 enforceable standards addressing discrimination against individuals
 22 with disabilities; (3) to ensure that the Federal government plays a
 23 central role in enforcing the standards established in this act on
 24 behalf of individuals with disabilities; and (4) to invoke the sweep
 25 of Congressional authority, including the power to enforce the 14th
 26 Amendment and to regulate commerce, in order to address the
 27 major areas of discrimination faced day to day by people with
 28 disabilities.

29 39. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
 30 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
 31 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
 32 accommodations identified for purposes of this title was:

33 (7) PUBLIC ACCOMMODATION - The following private
 34 entities are considered public accommodations for purposes of this
 35 title, if the operations of such entities affect commerce -
 36 ---

37 (E) a bakery, grocery store, clothing store, hardware store, shopping center,
 38 or other sales or rental establishment.

39 42 U.S.C. §12181(7)(E)

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1 40. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against
 2 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
 3 privileges, advantages, or accommodations of any place of public accommodation by any person
 4 who owns, leases, or leases to, or operates a place of public accommodation".

5 41. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
 6 42 U.S.C. §12182(b)(2)(a) are:

7 (I) the imposition or application of eligibility criteria
 8 that screen out or tend to screen out an individual with a disability
 9 or any class of individuals with disabilities from fully and equally
 10 enjoying any goods, services, facilities, privileges, advantages, or
 accommodations, unless such criteria can be shown to be necessary
 for the provision of the goods, services, facilities, privileges,
 advantages, or accommodations being offered;

11 (ii) a failure to make reasonable modifications in
 12 policies, practices, or procedures, when such modifications are
 13 necessary to afford such goods, services, facilities, privileges,
 14 advantages or accommodations to individuals with disabilities,
 unless the entity can demonstrate that making such modifications
 would fundamentally alter the nature of such goods, services,
 facilities, privileges, advantages, or accommodations;

15 (iii) a failure to take such steps as may be necessary to
 16 ensure that no individual with a disability is excluded, denied
 17 services, segregated or otherwise treated differently than other
 18 individuals because of the absence of auxiliary aids and services,
 unless the entity can demonstrate that taking such steps would
 19 fundamentally alter the nature of the good, service, facility,
 privilege, advantage, or accommodation being offered or would
 result in an undue burden;

20 (iv) a failure to remove architectural barriers, and
 21 communication barriers that are structural in nature, in existing
 22 facilities . . . where such removal is readily achievable; and

23 (v) where an entity can demonstrate that the removal of
 24 a barrier under clause (iv) is not readily achievable, a failure to
 25 make such goods, services, facilities, privileges, advantages or
 26 accommodations available through alternative methods if such
 27 methods are readily achievable.

28 The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public
 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

1 42. The removal of the barriers complained of by plaintiffs as hereinabove alleged was
2 at all times after January 26, 1992 "readily achievable" as to the subject building(s) of
3 FOODMAXX #468 pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if
4 the removal of all the barriers complained of herein together was not "readily achievable," the
5 removal of each individual barrier complained of herein was "readily achievable." On
6 information and belief, defendants' failure to remove said barriers was likewise due to
7 discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182
8 (b)(2)(A)(i)and (ii).

9 43. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily
10 accomplishable and able to be carried out without much difficulty or expense." The statute
11 defines relative "expense" in part in relation to the total financial resources of the entities
12 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that
13 plaintiffs complain of herein were and are "readily achievable" by the defendants under the
14 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
15 not "readily achievable" for defendants to remove each of such barriers, defendants have failed to
16 make the required services available through alternative methods which were readily achievable.

17 44. On information and belief, construction work on, and modifications of, the subject
18 building(s) of FOODMAXX #468 occurred after the compliance date for the Americans with
19 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III of
20 the ADA.

21 45. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
22 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
23 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the
24 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs
25 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from
26 returning to or making use of the public facilities complained of herein so long as the premises
27 and defendants' policies bar full and equal use by persons with physical disabilities.
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1 46. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a
 2 disability to engage in a futile gesture if such person has actual notice that a person or
 3 organization covered by this title does not intend to comply with its provisions". Pursuant to this
 4 section, plaintiff IRMA RAMIREZ has not returned to defendants' premises since on or about
 5 November 9, 2007, but on information and belief, alleges that defendants have continued to
 6 violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to
 7 access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
 8 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
 9 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 10 this title".

11 47. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights
 12 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
 13 the Americans with Disabilities Act of 1990, including but not limited to an order granting
 14 injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being
 15 deemed to be the prevailing party.

16 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

17 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS
 18 IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
 19 (On Behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS,
 20 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 21 California public benefit corporation, and Against Defendants EXPRESSWAY
 22 PARTNERS, LLC, a limited liability company and SAVE MART SUPERMARKETS,
 23 inclusive)
 24 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

25 48. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the
 26 allegations contained in paragraphs 1 through 47 of this complaint.
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1 49. At all times relevant to this action, California Civil Code §54 has provided that
 2 persons with physical disabilities are not to be discriminated against because of physical handicap
 3 or disability. This section provides that:

4 (a) Individuals with disabilities . . . have the same rights as
 5 the general public to full and free use of the streets, highways,
 6 sidewalks, walkways, public buildings, medical facilities, including
 7 hospitals, clinics, and physicians' offices, and other public places.

8 50. California Civil Code §54.1 provides that persons with disabilities shall not be
 9 denied full and equal access to places of public accommodation or facilities:

10 (a)(1) Individuals with disabilities shall be entitled to full
 11 and equal access, as other members of the general public, to
 12 accommodations, advantages, facilities, medical facilities, including
 13 hospitals, clinics, and physicians' offices, and privileges of all
 14 common carriers, airplanes, motor vehicles, railroad trains,
 15 motorbuses, streetcars, boats, or any other public conveyances or
 16 modes of transportation (whether private, public, franchised,
 17 licensed, contracted, or otherwise provided), telephone facilities,
 18 adoption agencies, private schools, hotels, lodging places, places of
 19 public accommodation, amusement or resort, and other places to
 20 which the general public is invited, subject only to the conditions
 21 and limitations established by law, or state or federal regulation, and
 22 applicable alike to all persons.

23 Civil Code §54.1(a)(1)

24 51. California Civil Code §54.1 further provides that a violation of the Americans with
 25 Disabilities Act of 1990 constitutes a violation of section 54.1:

26 (d) A violation of the right of an individual under the
 27 Americans with Disabilities Act of 1990 (Public Law 101-336) also
 28 constitutes a violation of this section, and nothing in this section
 shall be construed to limit the access of any person in violation of
 that act.

29 Civil Code §54.1(d)

30 52. Plaintiff IRMA RAMIREZ and the membership of plaintiff DREES are persons
 31 within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by
 32 the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific
 33 architectural barrier which defendants knowingly and willfully fail and refuse to remove
 34 constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and
 35 continue to be denied full and equal access to defendants' FOODMAXX #468. As a legal result,
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1 plaintiffs are entitled to seek damages pursuant to a court or jury determination, in accordance
2 with California Civil Code §54.3(a) for each day on which they visited or have been deterred from
3 visiting the FOODMAX #468 because of their knowledge and belief that the store is inaccessible
4 to persons with disabilities. California Civil Code §54.3(a) provides:

5 Any person or persons, firm or corporation, who denies or interferes
6 with admittance to or enjoyment of the public facilities as specified
7 in Sections 54 and 54.1 or otherwise interferes with the rights of an
8 individual with a disability under Sections 54, 54.1 and 54.2 is
9 liable for each offense for the actual damages and any amount as
10 may be determined by a jury, or the court sitting without a jury, up
to a maximum of three times the amount of actual damages but in
no case less than . . . one thousand dollars (\$1,000) and . . .
attorney's fees as may be determined by the court in addition
thereto, suffered by any person denied any of the rights provided in
Sections 54, 54.1 and 54.2.

11 Civil Code §54.3(a)

12 53. On or about December 22, 2006 June 28, 2007, July 13, 2007 and November 9,
13 2007, plaintiff IRMA RAMIREZ suffered violations of Civil Code §§54 and 54.1 in that plaintiff
14 IRMA RAMIREZ was denied access to its parking, the produce bins and other public facilities as
15 stated herein at the FOODMAXX #468 and on the basis that plaintiff IRMA RAMIREZ was a
16 person with physical disabilities.

17 54. As a result of the denial of equal access to defendants' facilities due to the acts and
18 omissions of defendants, and each of them, in owning, operating and maintaining these subject
19 public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to
20 rights under Civil Code §§54, 54.1 and 54.3, and plaintiff IRMA RAMIREZ suffered physical
21 discomfort, bodily injury on two of the four occasions on or about December 22, 2006 June 28,
22 2007, July 13, 2007 and November 9, 2007, including, but not limited to, fatigue, stress, strain
23 and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around and
24 through architectural barriers. Specifically, as a legal result of defendants negligence in the
25 design, construction and maintenance of the existing produce bins, plaintiff IRMA RAMIREZ
26 suffered continuous, repetitive and cumulative trauma to her upper extremities while attempting to
27 remove produce and stress and strain to her abdominal muscles.

1 55. Further, plaintiff IRMA RAMIREZ suffered mental distress, mental suffering,
2 mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
3 disappointment and worry, all of which are expectedly and naturally associated with a denial of
4 access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.
5 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole
6 basis that plaintiffs are persons or an entity that represents persons with physical disabilities and
7 unable, because of the architectural barriers created and maintained by the defendants in violation
8 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as
9 other persons.

10 56. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct
11 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of
12 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or
13 about December 22, 2006 June 28, 2007, July 13, 2007 and November 9, 2007 and on a
14 continuing basis since then, including statutory damages, a trebling of all of actual damages,
15 general and special damages available pursuant to §54.3 of the Civil Code according to proof.

16 57. As a result of defendants', and each of their, acts and omissions in this regard,
17 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
18 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical
19 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
20 the provisions of Civil Code §54.3 and §55, plaintiffs therefore will seek recovery in this lawsuit
21 for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,
22 plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also
23 to compel the defendants to make their facilities accessible to all members of the public with
24 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to
25 the provisions of §1021.5 of the Code of Civil Procedure.

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1 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

2 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.
 3 (On Behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS,
 4 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 5 California public benefit corporation and Against Defendants EXPRESSWAY
 6 PARTNERS, LLC, a limited liability company and SAVE MART SUPERMARKETS
 7 inclusive)
 8 (Health & Safety Code §19955, *et seq.*)

9 58. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 10 allegations contained in paragraphs 1 through 57 of this complaint.

11 59. Health & Safety Code §19955 provides in pertinent part:

12 The purpose of this part is to insure that public accommodations or
 13 facilities constructed in this state with private funds adhere to the
 14 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
 15 of Title 1 of the Government Code. For the purposes of this part
 16 “public accommodation or facilities” means a building, structure,
 17 facility, complex, or improved area which is used by the general
 18 public and shall include auditoriums, hospitals, theaters, restaurants,
 19 hotels, motels, stadiums, and convention centers. When sanitary
 20 facilities are made available for the public, clients or employees in
 21 such accommodations or facilities, they shall be made available for
 22 the handicapped.

23 60. Health & Safety Code §19956, which appears in the same chapter as §19955,
 24 provides in pertinent part, “accommodations constructed in this state shall conform to the
 25 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
 26 Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
 27 public accommodations constructed or altered after that date. On information and belief, portions
 28 of the FOODMAXX #468 and/or of the building(s) were constructed and/or altered after July 1,
 1970, and substantial portions of the subject store and/or the building(s) had alterations, structural
 repairs, and/or additions made to such public accommodations after July 1, 1970, thereby
 requiring said FOODMAXX #468 and/or building to be subject to the requirements of Part 5.5,
 §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions
 per Health & Safety Code §19959.

1 61. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
2 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
3 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
4 Regulations and these regulations must be complied with as to any alterations and/or
5 modifications of FOODMAXX #468 and/or the building(s) occurring after that date.
6 Construction changes occurring prior to this date but after July 1, 1970 triggered access
7 requirements pursuant to the "ASA" requirements, the American Standards Association
8 Specifications, A117.1-1961. On information and belief, at the time of the construction and
9 modification of said building, all buildings and facilities covered were required to conform to
10 each of the standards and specifications described in the American Standards Association
11 Specifications and/or those contained in Title 24 of the California Building Standards Code.

12 62. Grocery Stores such as the FOODMAXX #468 are "public accommodations or
13 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

14 63. As a result of the actions and failure to act of defendants, and as a result of the
15 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
16 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of plaintiffs'
17 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to
18 public facilities.

19 64. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
20 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
21 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
22 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
23 and to take such action both in plaintiffs' own interests and in order to enforce an important right
24 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
25 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
26 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953
27 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys' fees, costs
28 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-

1 3(a)). Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing
 2 party.

3 65. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
 4 them, to make the subject place of public accommodation readily accessible to and usable by
 5 persons with disabilities.

6 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

7 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND
 8 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES
 9 AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET
 10 SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

11 (On Behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS,
 12 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 13 California public benefit corporation, and Against Defendants EXPRESSWAY
 14 PARTNERS, LLC, a limited liability company and SAVE MART SUPERMARKETS,
 15 inclusive)
 16 (Civil Code §51, 51.5)

17 66. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the
 18 allegations contained in paragraphs 1 through 65 of this complaint.

19 67. Defendants' actions and omissions and failure to act as a reasonable and prudent
 20 public accommodation in identifying, removing and/or creating architectural barriers, policies,
 21 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
 22 Unruh Act provides:

23 This section shall be known, and may be cited, as the Unruh
 24 Civil Rights Act.

25 All persons within the jurisdiction of this state are free and
 26 equal, and no matter what their sex, race, color, religion, ancestry,
 27 national origin, or **disability** are entitled to the full and equal
 28 accommodations, advantages, facilities, privileges, or services in all
 business establishments of every kind whatsoever.

29 This section shall not be construed to confer any right or
 30 privilege on a person that is conditioned or limited by law or that is
 31 applicable alike to persons of every sex, color, race, religion,
 32 ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any
 2 construction, alteration, repair, structural or otherwise, or
 3 modification of any sort whatsoever, beyond that construction,
 4 alteration, repair, or modification that is otherwise required by other
 5 provisions of law, to any new or existing establishment, facility,
 6 building, improvement, or any other structure . . . nor shall anything
 7 in this section be construed to augment, restrict, or alter in any way
 8 the authority of the State Architect to require construction,
 9 alteration, repair, or modifications that the State Architect otherwise
 10 possesses pursuant to other . . . laws.

11 A violation of the right of any individual under the
 12 Americans with Disabilities Act of 1990 (Public Law 101-336) shall
 13 also constitute a violation of this section.

14 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 15 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
 16 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 17 failing to act to identify and remove barriers can be construed as a “negligent per se” act of
 18 defendants, and each of them.

19 68. The acts and omissions of defendants stated herein are discriminatory in nature and
 20 in violation of Civil Code §51.5:

21 No business establishment of any kind whatsoever shall
 22 discriminate against, boycott or blacklist, refuse to buy from, sell to,
 23 or trade with any person in this state because of the race, creed,
 24 religion, color, national origin, sex, or **disability** of the person or of
 25 the person’s partners, members, stockholders, directors, officers,
 26 managers, superintendents, agents, employees, business associates,
 suppliers, or customers.

27 As used in this section, “person” includes any person, firm
 28 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

29 Nothing in this section shall be construed to require any
 30 construction, alteration, repair, structural or otherwise, or
 31 modification of any sort whatsoever, beyond that construction,
 32 alteration, repair or modification that is otherwise required by other
 33 provisions of law, to any new or existing establishment, facility,
 34 building, improvement, or any other structure . . . nor shall anything
 35 in this section be construed to augment, restrict or alter in any way
 36 the authority of the State Architect to require construction,
 37 alteration, repair, or modifications that the State Architect otherwise
 38 possesses pursuant to other laws.

1 69. Defendants' acts and omissions as specified have denied to plaintiffs full and equal
2 accommodations, advantages, facilities, privileges and services in a business establishment, on the
3 basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act.
4 Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A violation of the
5 right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336)
6 shall also constitute a violation of this section". Plaintiffs accordingly incorporate the entirety of
7 their above cause of action for violation of the Americans with Disabilities Act at 36, *et seq.*, as if
8 replied herein.

9 70. As a legal result of the violation of plaintiff IRMA RAMIREZ's civil rights as
10 hereinabove described, plaintiff IRMA RAMIREZ has suffered general damages, bodily injury on
11 two (2) of the four occasions on or about December 22, 2006 June 28, 2007, July 13, 2007 and
12 November 9, 2007 , including, but not limited to, fatigue, stress, strain and pain in wheeling and
13 attempting to and/or transferring up, on, down, to, over, around and through architectural barriers.
14 Specifically, as a legal result of defendants negligence in the design, construction and
15 maintenance of the existing produce bins, plaintiff suffered stress and strained herself while
16 attempting to remove produce from the bins.

17 71. Further, plaintiff IRMA RAMIREZ suffered physical injury, emotional distress (all
18 to plaintiff's damage according to proof, and incurred reasonable attorneys' fees and costs).
19 Plaintiffs IRMA RAMIREZ and DREES are entitled to the rights and remedies of §52(a) of the
20 Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean
21 "special and general damages"), as well as to reasonable attorneys' fees and costs, as is allowed by
22 statute, according to proof if deemed to be the prevailing party.

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1 **PRAYER:**

2 Plaintiffs pray that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A
4 PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
5 DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

6 (On Behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS ENFORCEMENT,
7 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
8 corporation, and Against Defendants EXPRESSWAY PARTNERS, LLC, a limited
9 liability company and SAVE MART SUPERMARKETS, inclusive)
(42 U.S.C. §12101, et seq.)

10 1. For injunctive relief, compelling defendants EXPRESSWAY PARTNERS, LLC, a
11 limited liability company and SAVE MART SUPERMARKETS, inclusive, to make the
12 FOODMAXX 468, located at 605 Rohnert Park Express, Rohnert Park, California, readily
13 accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, et seq., and to
14 make reasonable modifications in policies, practice, eligibility criteria and procedures so as to
15 afford full access to the goods, services, facilities, privileges, advantages and accommodations
16 being offered.

17 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed
18 the prevailing party; and

19 3. For such other and further relief as the court may deem proper.

20 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND
21 EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1
22 AND 54.3, ET SEQ.**

23 (On Behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS ENFORCEMENT,
24 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
25 corporation, and Against Defendants EXPRESSWAY PARTNERS, LLC, a limited
26 liability company and SAVE MART SUPERMARKETS, inclusive)
(California Civil Code §§54, 54.1, 54.3, et seq.)

27 1. For injunctive relief, compelling defendants EXPRESSWAY PARTNERS, LLC, a
28 limited liability company and SAVE MART SUPERMARKETS, inclusive, to make the
FOODMAXX 468, located at 605 Rohnert Park Express, Rohnert Park, California, readily
accessible to and usable by individuals with disabilities, per state law.

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1 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for
 2 each occasion on which plaintiffs were deterred from returning to the subject public
 3 accommodation.

4 3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil Procedure
 5 §1021.5, if plaintiffs are deemed the prevailing party;

- 6 4. Treble damages pursuant to Civil Code §54.3;
 7 5. For all costs of suit;
 8 6. Prejudgment interest pursuant to Civil Code §3291;
 9 7. Such other and further relief as the court may deem just and proper.

10 **III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND
 EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1
 AND 54.3, ET SEQ.**

11 (On Behalf of Plaintiff IRMA RAMIREZ, and Against Defendants EXPRESSWAY
 12 PARTNERS, LLC, a limited liability company and SAVE MART SUPERMARKETS,
 13 inclusive),

(California Civil Code §§54, 54.1, 54.3, et seq.)

- 14 1. General and compensatory damages according to proof.

15 **IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
 SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
 §19955, ET. SEO.**

16 (On Behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS ENFORCEMENT,
 17 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
 18 corporation, and Against Defendants EXPRESSWAY PARTNERS, LLC, a limited
 19 liability company and SAVE MART SUPERMARKETS , inclusive)

(Health & Safety code §19955, et seq.)

20 1. For injunctive relief, compelling defendants EXPRESSWAY PARTNERS, LLC, a
 limited liability company and SAVE MART SUPERMARKETS, inclusive, to make the
 21 FOODMAXX 468, located at 605 Rohnert Park Express, Rohnert Park, California, readily
 22 accessible to and usable by individuals with disabilities, per state law.

23 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code §55,
 24 and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;
 25 3. For all costs of suit;
 26 4. For prejudgment interest pursuant to Civil Code §3291;
 27 5. Such other and further relief as the court may deem just and proper.

1 V. **PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
2 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
3 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
4 CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

5 (On Behalf of Plaintiffs IRMA RAMIREZ and DISABILITY RIGHTS ENFORCEMENT,
6 EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a California public benefit
7 corporation and Against Defendants EXPRESSWAY PARTNERS, LLC, a limited
8 liability company and SAVE MART SUPERMARKETS, inclusive)
9 (California Civil Code §§51, 51.5, et seq.)

10 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and

11 for each occasion on which plaintiffs were deterred from returning to the subject public
12 accommodation;

13 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the

14 prevailing party;

15 3. Treble damages pursuant to Civil Code §52(a);

16 4. For all costs of suit;

17 5. Prejudgment interest pursuant to Civil Code §3291; and

18 6. Such other and further relief as the court may deem just and proper.

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1 VI. **PRAAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
2 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
3 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
4 CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiff IRMA RAMIREZ, and Against Defendants EXPRESSWAY
PARTNERS, LLC, a limited liability company and SAVE MART SUPERMARKETS,
inclusive)

(California Civil Code §§51, 51.5, et seq.)

5 1. General and compensatory damages to plaintiff IRMA RAMIREZ according to
6 proof.

8 Dated: 2/13/08, 2008

9 THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

10 11 By: 

12 THOMAS E. FRANKOVICH
13 Attorneys for Plaintiffs IRMA RAMIREZ and DISABILITY
RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
HELPING YOU HELP OTHERS, a California public
14 benefit corporation

16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

18 Dated: 2/13/08, 2008

19 THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

20 21 By: 

22 THOMAS E. FRANKOVICH
23 Attorneys for Plaintiffs IRMA RAMIREZ and DISABILITY
RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
HELPING YOU HELP OTHERS, a California public
24 benefit corporation

Irma Ramirez
734 Morton Way
Santa Rosa, CA 95404

February 14, 2007

Manager
Food Max
605 Rohnert Park Exp.
Rohnert Park, CA 94931

Dear Manager:

I shop at Food Maxx. I use a wheelchair. The produce bins are too high. If I pull out an apple or an orange from the bottom, you know what happens. There is a produce avalanche down to the floor. Can't you do something about this? Also your parking for the disabled is quite faded, maybe it's time to repaint.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Food Maxx once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

I found out who might be able to help you. If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.

Thank You,


Irma Ramirez

Irma Ramirez
734 Morton Way
Santa Rosa, CA 95404

February 14, 2007

Owner of the Building
Food Maxx
605 Rohnert Park Exp.
Rohnert Park, CA 94931

Dear Owner of the Building:

I shop at Food Maxx. I use a wheelchair. The produce bins are too high. If I pull out an apple or an orange from the bottom, you know what happens. There is a produce avalanche down to the floor. Can't you do something about this? Also your parking for the disabled is quite faded, maybe it's time to repaint.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Food Maxx once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

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Thank you for considering my request.

Thank You,


Irma Ramirez